

21 C.J.S. Courts § 239

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Courts

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VI. Rules of Adjudication, Decisions, and Opinions

D. Opinions

§ 239. Preparation, filing, modification, or withdrawal

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Various rules govern how an opinion may be issued, modified, or withdrawn.

A decision and its supporting opinion may be announced at different times.¹ A judge who did not hear the oral argument may write the opinion if the other judges who heard the argument concurred.²

An appellant who is dissatisfied with the declaration of law contained in an opinion may petition to have the opinion modified,³ and an appellate court has the inherent power to modify its opinion at any time so long as it retains jurisdiction over the case.⁴ However, the withdrawal of an opinion that had been released to the reporting services is futile if the opinion was already published and is in wide circulation despite the appeal having been rendered moot.⁵ A trial judge's oral opinion is only a verbal expression of an informal opinion at the time and may be altered, modified, or completely abandoned.⁶

The practice of allowing counsel for the prevailing party to assist in writing the opinion should be discouraged.⁷

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Footnotes

¹ Wash.—*In re Recall of West*, 156 Wash. 2d 244, 126 P.3d 798 (2006).

² U.S.—*Standard Oil Co., Indiana, v. U.S.*, 7 F. Supp. 301 (Ct. Cl. 1934).

Pa.—*Rosen v. Seidenberg*, 111 Pa. Super. 534, 170 A. 351 (1934).

3 Ind.—*Pittsburgh, C., C. & St. L. Ry. Co. v. Friend*, 194 Ind. 579, 143 N.E. 879 (1924).

4 Okla.—*Hardcastle v. State*, 1925 OK 556, 111 Okla. 69, 238 P. 191 (1925).

S.D.—*Lynn v. Schirber*, 45 S.D. 10, 186 N.W. 570 (1922).

5 Fla.—*Merkle v. Guardianship of Jacoby*, 912 So. 2d 593 (Fla. 2d DCA 2005).

6 Wash.—*In re Dependency of C.M.*, 118 Wash. App. 643, 78 P.3d 191 (Div. 1 2003).

7 U.S.—*Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 29 Fed. R. Serv. 2d 1528 (5th Cir. 1980).

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